

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
WORCESTER DIVISION

SOLMETEX, INC.)	Civil Action No.: 04-CV-40024-NMG
)	
Plaintiff,)	Judge: Gorton
)	
v.)	
)	
MAXIMUM SEPARATION)	
SYSTEMS, INC.)	
)	
Defendant.)	

**PLAINTIFF SOLMETEX, INC.'S MOTION AND
MEMORANDUM TO CONSOLIDATE**

Plaintiff SoltemeX, Inc. ("SolmeteX") respectfully moves this Court to consolidate with the instant action a lawsuit filed in the United States District Court for the Western District of Washington involving similar parties and issues and transferred by the Court in Washington to this Court. As the Court will recall, Defendant Maximum Separation Systems, Inc. ("Maximum Separation") filed a lawsuit in the Western District of Washington involving similar parties and issues after the instant action was filed. *Maximum Separation Systems, Inc., et al. v. SolmeteX, Inc.*, Case No. 04-0324 FDB ("the Washington Action"). In response, SolmeteX filed in the Western District of Washington a Motion to Stay or Transfer Venue Pursuant to 28 U.S.C. § 1404(a). The Court in Washington, on April 6, 2004, granted SolmeteX's Motion and ordered that the Washington Action be transferred to this Court. In particular, the Washington Court found that the requirements of Fed. R. Civ. P. 4(k)(2) had been satisfied, and for the convenience of the parties and witnesses and in the interest of justice, it is appropriate for this action to proceed as opposed to the Washington Action. A copy of the Order

of the Washington Court transferring the Washington Action to this Court is attached hereto as Exhibit A for the convenience of the Court.

Based on the foregoing, SolmeteX requests that the Washington Action be consolidated with the instant action. Indeed, the Washington Action involves the same patent that is the subject of the instant action, and the same parties and claims are present in both cases.¹

Respectfully submitted,

SOLMETEX, INC.

Dated: 12 April 2004

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¹ Maximum Separation may argue that the two cases are not identical because, in the Washington Action, Richard H. Chilibeck, the named inventor, was joined as a plaintiff. Maximum Separation's argument is meritless. In the instant action, Maximum Separation admits that Chilibeck assigned the entire right, title and interest in the patent in suit to Maximum Separation but that the assignment had not yet been recorded in the U.S. Patent and Trademark Office. However, recording an assignment is not a prerequisite to ownership. The recording statute, 35 U.S.C. § 261, exists only to protect the assignee from subsequent bona fide purchasers without notice. *GAIA Tech., Inc. v. Reconversion Tech., Inc.*, 93 F.3d 774 (Fed. Cir. 1996). Further, once the Washington Action is transferred to this District, SolmeteX intends to file a motion dismissing Chilibeck as a party for lack of standing. Accordingly, the Washington Action should be consolidated with the instant action.

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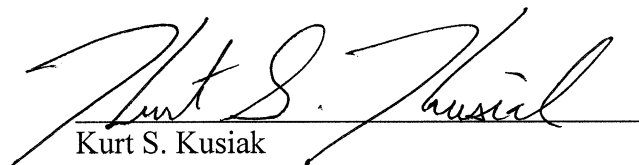
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CERTIFICATE OF SERVICE

I hereby certify that on 12 April 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: John M. Skenyon, counsel for Maximum Separation Systems, Inc., and I hereby certify that I have mailed by United States Postal Service the document to the following non CM-ECF participants: Jennifer L. Jolley and Rex B. Stratton, counsel for Maximum Separation Systems, Inc., Stratton Ballew, Suite 1313, 1218 Third Avenue, Seattle, Washington 98101.


Kurt S. Kusiak